

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 88987-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
This 18th day of August 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 29, 2008, XXXXX, on behalf of his minor daughter XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on June 5, 2008.

The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on June 13, 2008.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on August 5, 2008.

II
FACTUAL BACKGROUND

The Petitioner was taken to the emergency room of XXXXX Hospital on

October 11, 2007. The amount charged for this care was \$458.70. BCBSM denied payment for this treatment because it did not believe it was treatment of a medical emergency.

The Petitioner appealed BCBSM's decision to deny coverage. BCBSM held a managerial-level conference on May 15, 2008, and issued a final adverse determination dated May 19, 2008.

III ISSUE

Is BCBSM required to cover the Petitioner's October 11, 2007 emergency room care?

IV ANALYSIS

Petitioner's Argument

The Petitioner's father indicated that he took the Petitioner to the emergency room because she began to run a fever of around 101 degrees. He gave her Tylenol and checked her temperature 45 minutes later. At that time it had spiked to 102.7 degrees.

According to the Petitioner's father, the nurse at the emergency room gave the Petitioner Motrin on top of the Tylenol and this brought the temperature down. It took two days of both Tylenol and Motrin to keep bringing the Petitioner's temperature down.

The Petitioner's father says the fact that she had diaper rash had nothing to do with her fever. He believes that his 22-month-old daughter had a medical emergency when her temperature spiked even after he gave her Tylenol. Therefore, he argues that her care at the emergency room was a covered benefit and BCBSM is required to pay for it.

BCBSM's Argument

BCBSM says two sections of the certificate describe the emergency room benefits available to the Petitioner. Regarding the reimbursement of facility services for the treatment of a medical emergency, Section 3: *Coverage for Hospital, Facility and Alternatives to Hospital Care*, provides:

- Facility services are payable for the initial exam and treatment of a medical emergency or accidental injury in the outpatient department of a hospital. Follow-up care is not considered emergency treatment.

The reimbursement of physician services for the treatment of a medical emergency is covered in Section 4: *Coverage for Physician and Other Professional Provider Services*:

We pay for services of one or more physicians for the initial exam to treat a medical emergency or an accidental injury in the outpatient department of a hospital, urgent care center or physician's office. Follow-up care is not considered emergency treatment.

The definition of medical emergency is found in Section 7: *The Language of Health Care*:

A condition that occurs suddenly and unexpectedly. This condition could result in serious bodily harm or threaten life unless treated immediately. This is not a condition caused by an accidental injury.

BCBSM says that its medical consultant reviewed the Petitioner's medical records from her emergency room care and found that she was treated for a diaper rash and that she did not have a fever at the time she was treated. Further, fever is not identified as a chief complaint by either the emergency room nurse who performed the initial examination or by the treating physician, and fever is not identified as a symptom or as a clinical impression by the physician following the examination. The Petitioner's temperature is identified as 97 degrees in the records. BCBSM argues that the medical records clearly support its determination that the Petitioner's condition was not emergent as defined in the certificate.

Commissioner's Review

Section 418 of the Nonprofit Healthcare Corporation Reform Act, MCL 550.1418, deals with the provision of emergency services to persons covered under BCBSM certificates. This section says

(1) A health care corporation certificate that provides coverage for emergency health services shall provide coverage for medically necessary services provided to a member for the sudden onset of a medical condition that manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or to a pregnancy in the case of a pregnant woman, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. A health care corporation shall not require a physician to transfer a patient before the physician determines that the patient has reached the point of stabilization. A health care corporation shall not deny payment for

emergency health services up to the point of stabilization provided to a member under this subsection because of either of the following:

- (a) The final diagnosis.
 - (b) Prior authorization was not given by the health care corporation before emergency health services were provided.
- (2) As used in this section, "stabilization" means the point at which no material deterioration of a condition is likely, within reasonable medical probability, to result from or occur during transfer of the patient. [Emphasis added]

BCBSM cannot deny payment for emergency health services up to the point of stabilization for "the sudden onset of a medical condition that manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health."

The Commissioner assigned this matter to an IRO for a recommendation. The IRO expert is board certified in emergency medicine and has been in practice for more than 10 years. The IRO report said:

The MAXIMUS physician consultant noted that the [Petitioner] was brought to the emergency room on 10/11/07 for a chief complaint of a rash. The MAXIMUS physician consultant also noted that the [Petitioner's] father reported that he took her to the emergency department because she had a fever of 101 degrees, which continued to rise to 102.7 degrees despite being given Tylenol. The MAXIMUS physician consultant further noted that the [Petitioner's] father reported that she needed both Motrin and Tylenol to bring her fever down.

The MAXIMUS physician consultant indicated that according to the emergency department record, the [Petitioner] presented with the chief complaint of urinary/labia problems for one day. The MAXIMUS physician consultant also indicated that according to the triage note, there was no history of a fever. The MAXIMUS physician consultant explained that the [Petitioner] was afebrile on initial check of her vital signs in the emergency department. The MAXIMUS physician consultant also explained that a clear runny nose and irritability were reported. The MAXIMUS physician consultant indicated that the emergency room physician's note reported a chief complaint of a mild rash in the diaper area. The MAXIMUS physician consultant also indicated that on physical examination, the only noted abnormality was the rash of the diaper area. The MAXIMUS physician consultant further indicated that a urine sample was checked for signs of infection and was normal. The MAXIMUS physician consultant noted that the member was diagnosed with a diaper rash.

The IRO report concluded:

The MAXIMUS physician consultant explained that the services the [Petitioner] received on 10/11/07 were not emergent in nature. * * * The MAXIMUS physician consultant indicated that the documented symptoms do not reflect a condition that could result in bodily harm or threaten life unless treated immediately. The MAXIMUS physician consultant also indicated that by prudent layperson standards, a reasonable person with an average knowledge of health would not expect the absence of immediate care for these symptoms to seriously jeopardize the [Petitioner's] health. The MAXIMUS physician consultant concluded that the [Petitioner's] symptoms, as documented in the medical record, could have been safely evaluated on a non-emergent basis.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the recommendation is afforded deference by the Commissioner. The IRO's analysis is based on extensive expertise and professional judgment and the Commissioner can find no reason why the IRO recommendation should be rejected. Therefore, the Commissioner accepts the conclusion of the IRO and finds that the Petitioner's medical condition was not one that "manifests itself by signs and symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health" and therefore did not meet the requirement for coverage as emergency services under the certificate.

V ORDER

BCBSM's final adverse determination of May 19, 2008, is upheld. BCBSM is not required to cover the Petitioner's October 11, 2007, emergency room care.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of

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